

99 FERC ¶ 61, 167  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

KeySpan-Ravenswood, Inc.

Docket No. EL01-50-000

v.

New York Independent System  
Operator, Inc.

ORDER GRANTING COMPLAINT IN PART AND  
REQUIRING NEW TARIFF FILING

(Issued May 15, 2002)

This cases arises from a complaint filed by KeySpan-Ravenswood, Inc. (KeySpan) challenging the treatment of station power by the New York Independent System Operator, Inc. (NYISO). In this order, we grant the complaint insofar as the NYISO fails to address transmission of station power subject to Commission jurisdiction in its Market Administration and Control Area Services Tariff (Services Tariff), but deny KeySpan's proposed tariff revisions. This result benefits market participants by determining the appropriate cost responsibility for the transmission of station power within the NYISO.

Background

In a series of recent cases, the Commission addressed the jurisdictional ramifications of station power.<sup>1</sup> We defined station power as

the electric energy used for the heating, lighting, air- conditioning, and office equipment needs of the buildings on a generating facility's site, and for operating the electric equipment that is on the generating facility's site.<sup>2</sup>

In these orders, the Commission established, *inter alia*, that a generator's self-supply of station power does not involve a sale,<sup>3</sup> and that, while a third-party provision of station power generally does involve a sale, it is a sale for end-use not subject to the Commission's Federal Power Act (FPA) jurisdiction.<sup>4</sup> The Commission determined, however, that "the delivery of station power on an unbundled basis might involve unbundled retail transmission, which is subject to our jurisdiction."<sup>5</sup> In the latter context, we explained that

a generator that is meeting its station power requirements through either remote self-supply or third-party supply, to the degree that it does not own or have rights to use the grid that connects its facility to the source of the station power, would need to make appropriate arrangements for transmission and/or local distribution services.[<sup>6</sup>]

### Complaint and Responsive Pleadings

On March 8, 2001, KeySpan filed a complaint with the Commission pursuant to section 206 of the FPA,<sup>7</sup> requesting that the NYISO's Services Tariff be modified to ensure that generators directly connected to the transmission grid would be able to obtain station power from the NYISO and be permitted to net such power against its sales to the NYISO, thus treating station power as negative generation. KeySpan's complaint specifically relied on the Commission's acceptance of a proposal by PJM Interconnection, LLC (PJM), to net station power in its service area.<sup>8</sup>

According to KeySpan's complaint, the NYISO does not have any method for calculating station power in its Services Tariff, treating the matter only in Revised Technical Bulletin No. 34. KeySpan alleges that

[t]he methodology in Technical Bulletin No. 34 is unjust and unreasonable because it leaves the provision of Station Power to the vagaries of local utilities, who themselves or through their affiliates are participating in the wholesale market, even though Station Power clearly affects the provision of jurisdictional wholesale service. Apparently, it would even

allow retail tariffs to determine whether a generator may serve its own station power. These factors, together with a lack of a uniform system for addressing Station Power in the NYISO wholesale market, lead to unjust, unreasonable and discriminatory practices in accounting for Station Power.<sup>9</sup>

Furthermore, KeySpan maintained, requiring the NYISO to act consistently with PJM on this issue would further the Commission's "goal of working towards a larger Northeast regional wholesale power market."<sup>10</sup> As a remedy, KeySpan proposed that the NYISO Services Tariff be amended in accordance with the plan adopted by PJM.

Notice of KeySpan's filing was published in the Federal Register, 66 Fed. Reg. 15,108 (2001), with protests and interventions due on or before March 25, 2001. The NYISO filed a timely answer to KeySpan's complaint, and timely interventions protesting the complaint were filed by the New York State Public Service Commission (NYPSC), Members of the Transmission Owners Committee of the Energy Association of New York State (Member Systems), and Consolidated Edison Company of New York, Inc. (Edison). Timely motions to intervene in support of KeySpan's complaint were filed by Dynegy Power Marketing, Inc. (Dynegy) and Orion Power New York GP, Inc. (Orion). Sithe Power Marketing, L.P. (Sithe) filed a timely motion to intervene raising no substantive issues. Additionally, on May 7, 2001, Duke Energy North America, LLC (DENA) filed a motion to intervene out of time, raising no substantive issues.

In its answer opposing KeySpan's complaint, the NYISO maintained that it is not unjust and unreasonable for its station power policy to be contained in a Technical Bulletin rather than in the Services Tariff. Furthermore, according to the NYISO, its current practice is fully consistent with the Commission's treatment of station power in PJM II, which had been issued just after KeySpan filed its complaint. Nonetheless, the NYISO stated that it does not "necessarily oppose" KeySpan's proposals, so long as they would not hinder NYISO's ability to "safely and securely" operate the New York transmission grid and administer competitive wholesale markets in the state.<sup>11</sup>

On September 7, 2001, KeySpan amended its complaint in light of the intervening PJM decisions. In the amended complaint, KeySpan asserts that the PJM orders confirm that it would be discriminatory for

vertically integrated utilities [to] allow their own and affiliated generating facilities to continue to net station power, while requiring merchant generators to obtain all station power visible to the utilities at input meters solely at retail rates. The Commission agreed that such discrimination should not exist in a

developing competitive bulk power market.<sup>12]</sup>

KeySpan objects to the NYISO's characterizing of its current regime with respect to station power as consistent with the approach approved by the Commission for PJM. Specifically, KeySpan takes the NYISO to task for, unlike PJM, not having established a "comprehensive proposal for the netting of station power in the wholesale market administered by the NYISO."<sup>13</sup> KeySpan further argues that the language currently in the Technical Bulletin is "inconsistent" with the PJM orders "since it contains no provisions for netting and subjects all station power to retail tariffs."<sup>14</sup>

KeySpan therefore submits new revisions to the NYISO Services Tariff, which it believes necessary to make the Services Tariff consistent with the proposals approved by the Commission in the PJM orders.

Notice of KeySpan's amended complaint was published in the Federal Register, 66 Fed. Reg. 48,864 (2001), with protests and interventions due on or before September 25, 2001. The NYISO filed a timely answer to KeySpan's amended complaint. Timely renewed protests were filed by the Member Systems and Edison. Additionally, timely motions to intervene in support of KeySpan's amended complaint were filed by USGen New England, Inc. (USGen), the Mirant Companies (Mirant),<sup>15</sup> the Independent Power Producers of New York, Inc. (IPPNY), and the NRG Companies.<sup>16</sup> Timely motions to intervene raising no substantive issues were filed by PPL Electric Utilities Corporation and PPL EnergyPlus, LLC (collectively, PPL), AES NY, L.L.C. and AES Eastern Energy, L.P. (collectively, AES), and Sithe.<sup>17</sup>

In its answer to the amended complaint, NYISO reiterates its view that its treatment of station power in the Technical Bulletin is consistent with the Commission's decision in PJM II. While the NYISO does not object "in principle" if the Commission determines that "changes are necessary," it cautions against "overly hasty imposition of new tariff language that might diminish its ability to securely operate New York State's transmission grid and wholesale energy markets."<sup>18</sup> Rather, the NYISO believes that it should be permitted to work with its stakeholders to ensure that any such changes made are appropriate for New York. In this context, it emphasizes that certain aspects of PJM's treatment of station power would not be appropriate for the NYISO. For example, while PJM waives ancillary services charges for station power because the costs of implementing such a system would exceed its revenues, this would not be true for the NYISO, "which has larger, and more numerous ancillary services markets."<sup>19</sup>

The Member Systems object that the Commission does not have authority to grant

KeySpan's requests that station power be exempted from state-approved local distribution service or that the Commission order the Member Systems to deliver station power directly to merchant generators at wholesale rates. According to the Member Systems, KeySpan's complaint runs afoul of the Commission's recognition in PJM II that station power involves "the delivery of electricity directly to end users."<sup>20</sup> Similarly, Member Systems assert, KeySpan's "claim that state authorities have no jurisdiction over deliveries to end users made at transmission voltage was expressly rejected by the Commission in Order No. 888" and subsequent orders."<sup>21</sup>

Member Systems also argue that KeySpan has failed to demonstrate that the existing tariff provisions of the NYISO are unreasonable or unduly discriminatory. Specifically, Member Systems assert that KeySpan's claim that merchant generators are entitled to use utility-owned facilities on the same basis as the utilities themselves was rejected by PJM II,<sup>22</sup> and that KeySpan has failed to demonstrate that it cannot receive sufficient station power service by means of the NYISO Services Tariff. Member Systems further contend that KeySpan cannot demonstrate that its proposed tariff changes are just and reasonable. For example, Member Systems emphasize that, unlike PJM, the NYISO should be able to bill ancillary service charges to station power deliveries.

Finally, Member Systems urge the Commission not to prejudge the results of the collaborative process now underway to establish a regional transmission organization for the Northeast.

Edison asserts that, contrary to KeySpan's allegation, it "treats all generators attached to its system consistently with respect to the provision and delivery of station power," regardless of whether a generator sells its output to Edison or other NYISO-administered electric markets.<sup>23</sup> Edison states that, as a factual matter, it uses distribution facilities "for much of the station power delivered to KeySpan and most of the station power delivered to other generators."<sup>24</sup> In any event, Edison argues, KeySpan's claim "is foreclosed by the Commission's determination that the provision of station power is a retail service."<sup>25</sup>

## Discussion

### Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, the notices of intervention and the timely, unopposed motions to intervene filed by the NYPSC, Member Systems, Edison, Dynegy, Orion, Sithe, USGen, Mirant, IPPNY, NRG, PPL, AES and DENA<sup>26</sup> serve to make them parties to this

proceeding.

### KeySpan's Complaint

At the outset, the Commission wishes to make clear that the fundamental questions about the appropriate treatment of station power were answered in PJM II and PJM III. Thus, we stated that while neither self-supply nor third-party supply of station power involved a sale subject to Commission jurisdiction, the delivery of such power was on a different footing.<sup>27</sup> However, we explained that the delivery of station power on an unbundled basis "might involve unbundled retail transmission, which is subject to our jurisdiction."<sup>28</sup> Depending on the situation, the delivery of station power could be transmission under our jurisdiction, or involve local distribution subject to state jurisdiction, or both.<sup>29</sup>

While the Commission's PJM decisions clearly do not foreclose KeySpan's complaint, as the Member Systems and Edison would have it, neither do they require that KeySpan's proposal be adopted in its entirety. As the Member Systems and Edison indicate, much of the delivery of station power to KeySpan and like generators in the NYISO service area would be by means of local distribution subject to state regulation.

However, to the extent that delivery of station power does involve unbundled retail transmission, it is subject to the Commission's jurisdiction. We believe that KeySpan has met its burden of showing that the current NYISO treatment of the transmission of station power in its operating manual is insufficient. To the extent that the delivery of station power is jurisdictional, its treatment must be addressed in the NYISO Services Tariff, not merely referred to in a subsidiary instrument.<sup>30</sup> Furthermore, NYISO must allow self-supplying merchant generators to net station power against gross output over some reasonable time period in order "to ensure that they do not bear a cost that has no relationship to any 'service' purportedly being provided by another party."<sup>31</sup>

Accordingly, the Commission will require the NYISO to file a proposed revised tariff to include transmission of station power. In so doing, we are mindful of the NYISO's concern that it be permitted to work with its stakeholders to ensure that any such changes are workable in New York. In this regard, we emphasize that the NYISO's proposal need not track aspects of PJM's proposal which would be inappropriate for New York. For example, while one time period may be reasonable to measure netting for PJM, another time period may or may not be appropriate for the NYISO. Similarly, as the NYISO indicates, its treatment of ancillary services may or may not need be different

from PJM's.

The Commission orders:

(A) The NYISO is hereby directed to make a compliance filing within 90 days revising its Services Tariff to conform to the requirements of this order.

(B) In all other respects, KeySpan's complaint is hereby denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

<sup>1</sup>PJM Interconnection, LLC, 94 FERC ¶ 61,251 (2001) (PJM II); PJM Interconnection, LLC, 95 FERC ¶ 61,333 (2001) (PJM III); PJM Interconnection, LLC, 95 FERC ¶ 61,470 (2001) (PJM IV).

<sup>2</sup>PJM II, 94 FERC at 61,889.

<sup>3</sup>Id. at 61,889-91.

<sup>4</sup>Id.

<sup>5</sup>PJM III, 95 FERC at 62,184; accord, PJM II, 94 FERC at 61,891 n.60; see also id. at 61,892 n.63.

<sup>6</sup>PJM III, 95 FERC at 62,186. We particularly referred to the situation in a retail choice state, such as New York, where an end-user is buying unbundled retail transmission service and unbundled power supply as separate purchases, as one in which unbundled retail transmission service would be included. Id. at 62,185; accord, PJM II, 94 FERC at 61,891 n.60.

<sup>7</sup>16 U.S.C. § 824e (1994).

<sup>8</sup>See PJM Interconnection, LLC, 93 FERC ¶ 61,061 (2000).

<sup>9</sup>KeySpan Complaint at 3 (footnote omitted).

<sup>10</sup>Id.

<sup>11</sup>We discuss the arguments raised by protestors Member Systems and Edison below.

**12** KeySpan Amended Complaint at 7-8.

**13** Id. at 9.

**14** Id.

**15** The Mirant Companies are comprised of Mirant Americas Energy Marketing LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY-Gen, LLC.

**16** The NRG Companies consist of Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor, LLC.

**17** On October 24, 2001, KeySpan filed an answer to certain of the protests to its amended complaint, which prompted a response by the Member Systems. The Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2001), generally do not allow such answers, and we reject it. Member Systems' response is therefore dismissed as moot.

**18** Id.

**19** Id.

**20** Member Systems Protest at 6, citing PJM II, 94 FERC at 61,894.

**21** Id. at 6-7 (citations omitted).

**22** Id. at 14-16, citing PJM II, 94 FERC at 61,893.

**23** Edison Protest at 1-2.

**24** Id. at 3.

**25** Id., citing PJM II, 94 FERC at 61,891, 61,894. On October 24, 2001, KeySpan submitted an answer to the protests of Member Systems and Edison, to which Member Systems responded on November 7, 2001. Because Rule 213 of Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), does not generally permit answers to protests, KeySpan's answer will be rejected, and Member Systems' response is therefore dismissed as moot.

**26** The notice issued in response to the amended complaint renders DENA's intervention timely.

**27** PJM II, 94 FERC at 61,891 n.60.

**28** PJM III, 95 FERC at 62,184.

**29** Id.

**30** See, e.g., Town of Norwood v. FERC, 217 F.3d 24, 28 (D.C. Cir. 2000).

**31** PJM II, 94 FERC at 61,893; accord, PJM IV, 95 FERC at 62,683-85; PJM III, 95 FERC at 62,187-88.